IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. Sales Tax Revision Petition No.54/2005

A.C.T.O., Flying Squad, Bharatpur
Vs.
M/s. Dey's Medical Store, Jaipur

01.08.2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Amit Ratnawat for Mr.R.B. Mathur for the petitioner.

Heard learned counsel for the petitioner.

This revision petition is covered by the several decisions of this Court, therefore, the same has been disposed of at this stage.

By concurrent findings of two appellate authorities below, it was found in favour of the respondent-assessee that no penalty under Section 78(5) of the R.S.T. Act was imposable upon the respondent-assessee merely because at the time of checking, though the relevant documents like Bill and Bilty were admittedly found with the goods in transit, but declaration form No.ST-18A was not filled up completely.

Learned counsel for the revenue has relied upon the judgment of the Hon'ble Supreme Court in **Commissioner of**

Sales Tax and Another Vs. P.T. Enterprises and Another (2000) 117 STC 314 (SC) wherein the Hon'ble Supreme Court has only held that Section 29-A of the Madhya Pradesh General Sales Tax Act, 1958, authorizes the check-post officer to question, with reference to their market value, the value of the goods, which are carried by the transporter in his vehicle, as contained in the declaration or documents issued by the consignor of the goods, and issue a notice under sub-section (11) of that section to show cause why it should not be held that the vehicle of the transporter was carrying goods without paying sales tax or with the intention to evading sales tax, and why penalty should not be imposed. This judgment is not applicable to the facts of the present case because admittedly, the other relevant documents like bill and builty were accompanied with the goods in transit, the genuineness of such documents was not even doubted by the assessing authority and the power to issue notice and impose penalty is not in question in the present case. The case is that furnishing of Form ST18A with some cuttings and later on furnishing of correct Form ST18A has been taken by the two appellate authorities of the department concurrently to be a bonafide clerical error, it could not result in the imposition of the penalty. Therefore, this judgment has no application to the present case. The other judgment relied upon by learned counsel for the revenue in case of **Calcutta Iron Merchants' Association and Another Vs. Commissioner of**

Commercial Taxes and Another (1996) 101 STC 422 (SC) is also not applicable to the facts of the present case. In that case, the assessee contended that since goods in question were taxable at the first point of sale, namely, iron and steel, therefore, the sellers (manufacturers) were not issuing the declarations as contemplated by Rule 89A(2) and they were, therefore, not in a position to produce the declaration when demanded by the authorities. This judgment has no application to the present case because admittedly declaration in Form No.ST18A was furnished by the consignee assessee even at the time of transit and on being pointed out about some cuttings in ST18A, the corrected ST18A was furnished by the assessee.

This Court has held in a number of similar cases that no penalty under Section 78(5) of the R.S.T. Act is imposable in the aforesaid circumstances and no question of law arises against concurrent finding of two appellate authorities below.

Accordingly, there is no force in this revision petition as no question of law arises for consideration under Section 86 of the Act. The revision petition is, accordingly, devoid of merit and the same is, therefore, dismissed. A copy of this order be sent to the respondent-assessee.

[**Dr. Vineet Kothari**],**J.**

S.S.**Jr.P.A.**
Item No.13